

Revenge Porn
An analysis of legislative and policy responses
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Revenge Porn: An analysis of legislative and policy responses

Assistant Professor Terry Goldsworthy
Bond University

Outline

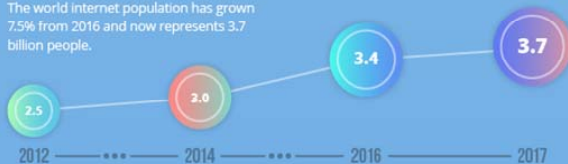
- The Impact of Technology on Crime
- Revenge Porn and Legal Responses
- What are appropriate responses
- Challenges
- Questions





The internet is growing – 3.7 billion people in 2017

The world internet population has grown 7.5% from 2016 and now represents 3.7 billion people.

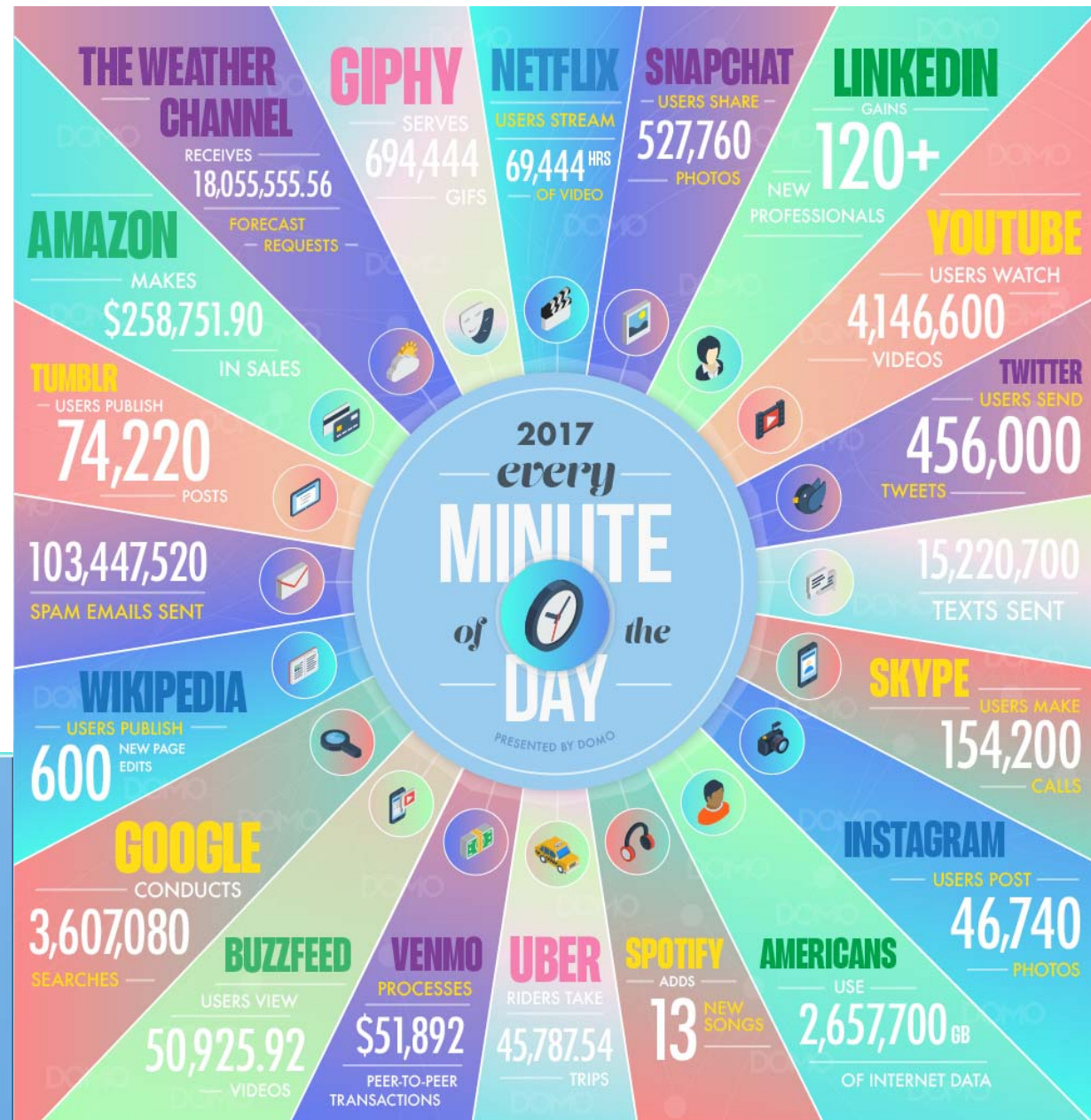


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NSW Government to crackdown on people posting revenge porn online

PEOPLE who post sexually explicit images of former partners online could be hit with three year's in the clink under tough new laws.

Benedict Brook @BenedictBrook

news.com.au MAY 21, 2017 2:27F

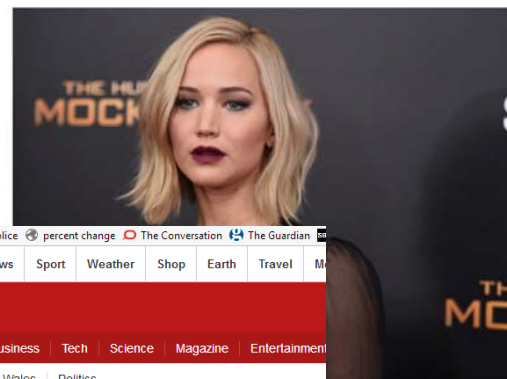


Ex-boyfriend pleads guilty under Minnesota's new 'revenge porn' law

Nearly 10 million Americans are victims of revenge porn, study finds

LORD JANKUNIAN
DEED 14, 2016, 9:03 AM

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Revenge porn: More than 200 prosecuted under new law

6 September 2016 | UK

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Revenge porn victim wants US to adopt 'right to be forgotten' law

By Julia Marsh

January 4, 2017 | 7:34pm | Updated



Michigan woman gets \$500K in revenge-porn case

USA TODAY NETWORK Katrease Stafford, Detroit Free Press Published 7:34 a.m. ET Aug. 26, 2016 | Updated 3:40 p.m. ET Aug. 26, 2016



DETROIT — In what might be Michigan's first revenge-pornography case resulting in a monetary judgment, a woman was awarded \$500,000 this week after her ex-boyfriend posted nude photographs of her on multiple internet sites.

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breaking news

Revenge porn now a crime in NSW

People who are caught recording or sharing intimate images of others without their consent are now liable for prosecution under new NSW laws.



Revenge porn victim to Google: Make me disappear

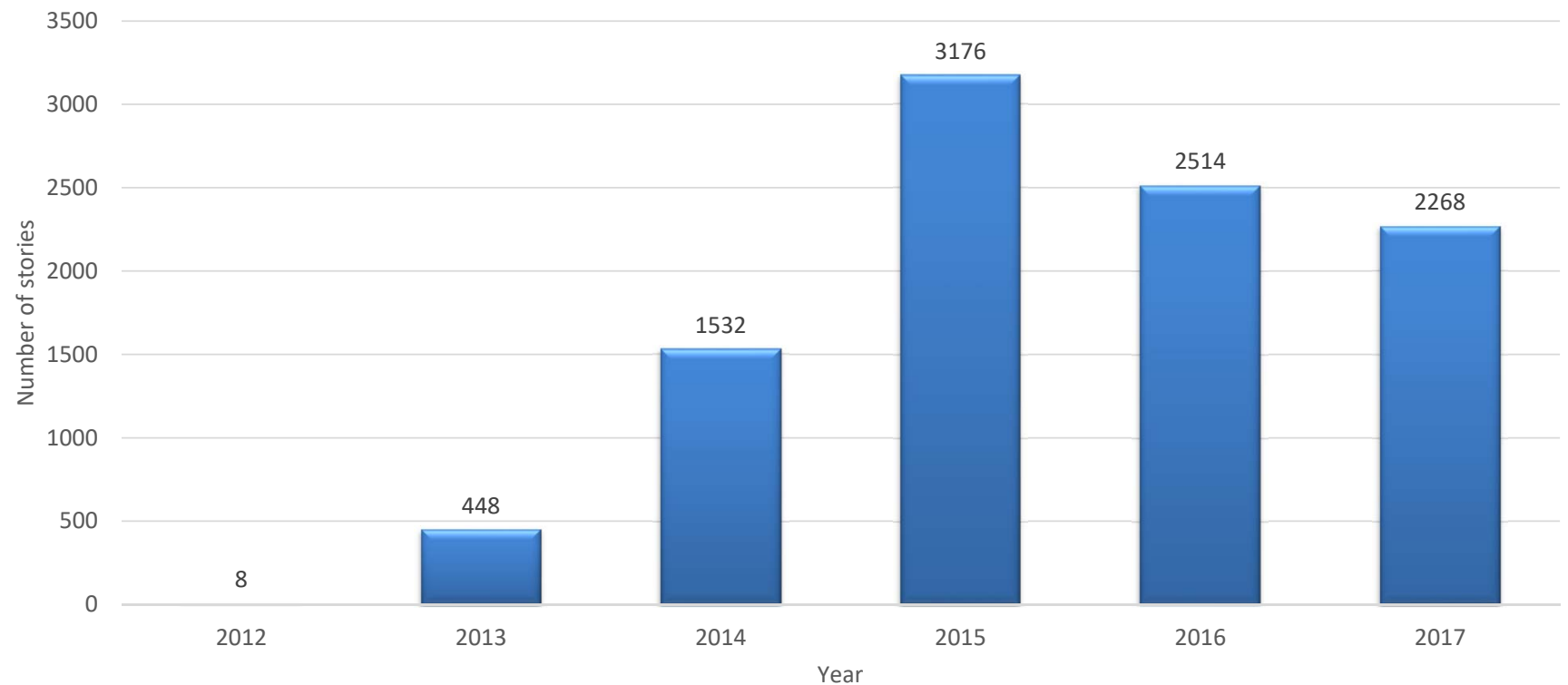




Factiva Media search

- Five year search conducted for term "Revenge Porn"

Factiva Media Engine search for stories using the term "Revenge Porn" 2012-2017





Why is this important?

- 2015 Council of Australian Government has flagged this as an emergent issue

“Technology-facilitated abuse encompasses the non-consensual distribution of sexual images, as well as stalking, monitoring of location via car or mobile device GPS systems, harassment and abuse through social media, texts or email and monitoring and tracking of website history of computers or mobile devices”

- 2016 Federal Summit -Strategies to reduce the increased use of technology to facilitate abuse against women
- 2016 Federal Senate inquiry
- 2016 NSW Parliamentary inquiry
- Law Reform Commission reports



Prevalence

- In 2014, **at least 3,000 pornography** websites around the world were hosting the revenge genre, and the number was said to be increasing (The Economist, 2014).
- Study by Powell, Henry and Flynn 2017 – Australian Criminology Research Grant survey of 4274 Australians aged 16-49
 - **1 in 5 (23%) any image based abuse victimisation**
 - 1 in 5 (20%) Images taken
 - 1 in 10 (11%) Images distributed
 - 1 in 10 (9%) Images threatened
- Overall they found that **women and men reported similar rates** of victimisation of image-based abuse behaviours.
- 2016 study by the US Data and Research Institute showed **one in 25 online Americans has been a victim** of threats or posts of nearly nude or nude images without their permission
- eSafety Commission received over 350 complaints between October 2016 and April 2017

The impact of technology on crime

- The rise of technology has impacted on criminal activity in a number of ways



Movement to
the virtual world



Acquisition of
new victims



Extension and
facilitation of
traditional
offences



Creation of new
offences





Old Dog – New Tricks

- The unauthorised public release of an intimate image following the breakdown of a relationship was not unknown in Australia prior to the Internet.
- Though not criminalised were actionable through the civil law of defamation.
- In 2001, the Supreme Court of Queensland adjudicated the matter of *Shepherd v Walsh*, a dispute between a woman, Shepherd, and her ex-boyfriend and the publisher of “The Picture” magazine.
- Shepherd sought damages for defamation from her ex-Mr. Walsh (and others) after he had sent a nude photograph of her to *The Picture* magazine that featured in the Home Girls section and it was published.
- He had done this “as a revenge on his ex-girlfriend”.
- She received \$50,000 in damages.

A new offence – ‘Revenge Porn’

- Has been driven by three factors:
 - the ability to create content
 - the ability to distribute this content
 - the assistance in many cases of facilitators to distribute to a much wider audience
- To be considered revenge porn the following elements usually present
 - ✓ Existing or previous relationship
 - ✓ Intent to cause harm
 - ✓ Unauthorised public release of
 - ✓ Intimate images
 - ✓ Technology facilitated





Expansion of the offence – not just revenge anymore

- “revenge porn” term now seems to be used to capture any illegal distribution of an intimate image
- Used for mass victims
- Brisbane and Adelaide examples
- Adelaide release initially consisted of original nude images but then had faked nude images added



Extension and facilitation of traditional offences

- *Currently, instances of the malicious distribution of intimate images in Queensland may, depending on the circumstances, be prosecuted as offences of:*
 - *extortion (section 415 Criminal Code 1899),*
 - *unlawful stalking (s.359E Criminal Code 1899) and under*
 - *Queensland Domestic and Family Violence Protection Act 2012*
- Meaning of domestic violence s8
- Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—
 - is **physically or sexually abusive**; or
 - is **emotionally or psychologically abusive**; or
 - in any other way **controls or dominates** the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.
- Also Federal laws, using a carriage service to menace, harass or cause offence (Criminal Code Act 1995 (Cth) section 474.17)
- ...reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Movement to the virtual world

- Gold Coast Centre against Sexual Violence
- Counsellors noted an increase in the use of technology in SA matters
- 5 main areas identified
- An extension of sexual assault



Met offender online



Online harassment



Victim transmitted explicit material



Offender transmitted explicit material



Assault filmed



Revenge Porn Laws in Australia

- Specific and non-specific



State	Act	Tech aspect	Consent element	Intent element	Type of harm	Type of image	Penalty
Federal	Using a carriage service to menace, harass or cause offence Section 474.17, Criminal Code Act 1995 (Cth) .	Yes	No	No	that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive	N/A	Maximum of 3 years imprisonment.
ACT	Non-consensual distribution of intimate images, Section 72C, Crimes Act 1900 .	Yes	Yes	Refers to recklessness	N/A	Intimate image of a person— (a) means a still or moving image, in any form— (i) of the person’s genital or anal region; or (ii) for a female or a transgender or intersex person who identifies as a female—of the person’s breasts; or (iii) of the person engaged in a private act; or (iv) that depicts the person in a sexual manner or context; and (b) includes an image, in any form that has been altered to appear to show any of the things mentioned in paragraph (a).	Maximum of 3 years imprisonment. 5 years if the image is of a person under the age of 16 years.
NT	No- but previous government considered drafting new laws.						
NSW	Distribute intimate image without consent, Section 91Q, Crimes Act 1900 .	No	Yes	Yes	N/A	intimate image means: (a) an image of a person’s private parts, or of a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy, or (b) an image that has been altered to appear to show a person’s private parts, or a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy.	Maximum of 3 years imprisonment
QLD	No						
SA	Distribution of invasive image/humiliating g or degrading film Section 26B-C, Summary Offences Act 1953 (SA)	No	Yes	No	N/A	Invasive image of the person if it depicts the person in a place other than a public place— (a) engaged in a private act; or (b) in a state of undress such that— (i) in the case of a female—the bare breasts are visible; or (ii) in any case—the bare genital or anal region is visible.	If the image is of a person under the age of 17 years a maximum of 4 years imprisonment. Any other case maximum of 2 years imprisonment.
TAS	No						
VIC	Section 41DA – Distribution of intimate image, Summary Offences Act 1966 .	Yes, does reference social media	Yes	Yes	N/A	Image is contrary to community standards of acceptable conduct.	Maximum 2 years imprisonment.
WA	Restraints on respondents, section 10G/61, Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016 .	No	No	No	N/A	Not defined talks about intimate personal images.	Maximum imprisonment 2 years.



Australia

- *Victorian Summary Offences act 1966 - sect 41DA - Distribution of intimate image*
- A person (A) commits an offence if—
 - A intentionally distributes an intimate image of another person (B) to a person other than B; and
 - the distribution of the image is contrary to community standards of acceptable conduct.
 - 2 years imprisonment
 - Does reference social media
- Additional section covers threats to distribute
- *Guided by “community standard” test*
- *Competition between privacy and freedom of expression*



Australia

- Victorian laws similar to South Australian Laws, sections 26B and 26C of the *Summary Offences Act 1953 (SA)*, which created the offence of distributing an invasive image.
- **NSW Crimes Act 91Q - Distribute intimate image without consent**
 - (1) A person who intentionally distributes an intimate image of another person:
 - (a) without the consent of the person, and
 - (b) knowing the person did not consent to the distribution or being reckless as to whether the person consented to the distribution is guilty of an offence.
- Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.
 - (2) A prosecution of a **person under the age of 16 years** for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.



Queensland case study

- Matter of Jai Johns 33 year old female
 - ✓ Two year relationship with a married man, relationship ended and male returned to wife
 - ✓ Male agreed to delete naked and sexual photos of Johns
 - ✓ Wife of male then posted four intimate images on her husbands Facebook page
 - ✓ She posted the photos on her husband's Facebook page, with the comment "Cheated on my wife, broke her heart ..." and a reference to "whore".
 - ✓ Taken down within two hours
 - ✓ Factors such as number of friends, mutual friends
- Wife charged and found guilty under Commonwealth legislation and given 12 month good behaviour bond
- Complaint now undertraining civil action - breach of confidence and applied for an injunction to prevent further publication of any photos
- Claiming damages

State	Technology specific	Consent element	Intent element	Type of harm	Type of image
UK	No	Yes	Yes	With the intention of causing that individual distress	A private sexual photograph or film
Canada	No	Yes	Yes (refers to knowingly or being reckless)	None required	Intimate - in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity
Colorado	Yes	Yes	Yes	To harass the depicted person and inflict serious emotional distress upon the depicted person and the conduct results in serious emotional distress of the depicted person	Private intimate parts -means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female
California	No	Yes	Yes	Will cause serious emotional distress, and the person depicted suffers that distress	The image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation
Idaho	No	Yes	Yes (mentions reckless disregard)	None required	Image or images of the intimate areas of another person or persons
Virginia	No (but does mention service providers)	Yes (mentions not licenced or authorised)	Yes	To coerce, harass, or intimidate	Any videographic or still image created by any means whatsoever that depicts another person who is totally nude, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast

Overseas - UK



- UK – Section 33 of the *Criminal Justice and Courts Act 2015*
- It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—
 - (a) without the consent of an individual who appears in the photograph or film, and
 - (b) with the intention of causing that individual distress.
- Does not specifically mention technology based offences
- CPS report said 206 people were prosecuted for disclosing private sexual images in the first year of the offence.



US – Colorado law

- Colorado *Revised Statutes*, 18-7-107 and 18-7-108
 - offence of posting a private image for harassment
- ✓ 18 years of age
- ✓ He or she posts or distributes through the use of social media or any web site
- ✓ Any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older
- ✓ Intent to harass and inflict serious emotional distress upon the person depicted
- ✓ Without consent of the person
- ✓ When the depicted person would have a reasonable expectation that the image would remain private
- ✓ The conduct results in serious emotional distress of the person depicted

California – case study

- California Penal Code 647 (j)(4) unlawful distribution of image
- 2016 - Used Snapchat to take a nude photo of another 71 year old women in the change room at the gym
- Body shaming v revenge porn – focus on the act not the intent/distribution
- Charged under 647 invasion of privacy rather than revenge porn section
- Sentenced to 45 days in jail or 30 days of community service removing graffiti





Crime Prevention v Victim Blaming

- Crime prevention and victim blaming are often confused
- Emotive issue
- One seeks to understand the cause of crime and prevent reoccurrence
- The other apportions blame and culpability for the offence
- It is reasonable to suggest steps to people that they can take to mitigate becoming a victim of crime.
- Identifying and educating groups at risk is also an important crime prevention strategy. For instance, young people are more likely to [engage in sexting behaviour](#) when unaware of the potential consequences.
- Qld Police case study – images from 70 schools identified on overseas site
- Police issued statement in relation to matter.



QPS statement

- “Pictures you post on social media sites are unfortunately there for the taking to anyone...
- Anyone can access them and once they are gone, they are gone forever...
- We encourage parents to talk with their children openly about these matters and discuss the consequences...

The Courier-Mail
BRISBANE 11-26°C

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AUSTRALIAN FEDERAL POLICE

0:54 / 2:04

Queensland schoolgirls targeted in international pornography ring - 7 News Queensland

QPS defends porn ring statement

NATHAN TORPEY, The Courier-Mail
August 18, 2016 7:42pm

THE Queensland Police Service (QPS) has come under fire for allegedly blaming the victims at the centre of a child pornography ring.

Students from 71 Australian schools, including 18 from Queensland, were targeted in the international pornography ring which saw young men secretly exchanging graphic sexual images of female students.

AFP Detective Acting Superintendent Marcus Boorman said many of the “images allegedly depict non-consenting or underage girls.”

However, QPS released a statement on Wednesday which said they had so far found no evidence of child exploitation and advised parents to speak to their children about the consequences.

“We believe the site is hosted overseas and does not appear to contain any child exploitation material,” Detective Superintendent Cheryl Scanlon said.

QPS encourages parents to talk with their children openly about these matters.



Resistance to specific laws

- *There already exists a range of offences which may cover cases of revenge porn raising the question of whether these offences are effectively enforced in relation to revenge porn and if they are whether a specific offence is necessary.* (Salter & Croft, 2015, p. 9)
- Care must also be taken to ensure that the legislation will in fact be effective in targeting the appropriate offenders.
- Criticism has been levelled at the Victorian legislation with statistics revealing that almost 30 percent of offenders charged are aged between 10-17 years (Campbell, 2016).
- The Western Australian Attorney-General, Michael Mischin, argued the Victorian laws were targeting the wrong offenders:
- *“So it’s stupidity, naivety and immaturity rather than criminality and that’s not quite what we’re driving at,”* the Attorney-General said, adding that while the problem of “sexting” and “nude selfies” among young people was unacceptable and should not be ignored, criminalising children had to be a last resort. (Campbell, 2016)



It is more than just new laws

- 2016 - The minister for women, Michaelia Cash, noted that at the federal level: “... *there are already in place criminal laws ... and there has been successful prosecution.*”
- But although there are already offences that cover acts of revenge porn, it appears prosecutions under these are rare – as Cash noted.
- Other issues to consider:
 - Baseline of evidence to show current laws are ineffective
 - New offences need to be effective in tackling deficiencies
 - Intersection between civil and criminal law
 - Governmental co-ordination – recent eSafety Commission initiatives, ACORN
 - Under-reporting
 - The role of industry



Future Challenges

- Accepting that harm minimisation and risk mitigation are part of a rational response
- Recognising that this issues crosses a number of crime categories (e.g. DV, child exploitation, sexual assault, stalking, extortion).
- Investigative issues
 - Cross jurisdictional boundaries
 - Transnational in nature
 - Anonymity of both complainant and offender
 - Lack of specialisation in the law enforcement response
 - NT experience in court processes



Thank You!

Further information can be found in the following article
Goldsworthy, T., Raj, M., & Crowley, J. (2017). "Revenge Porn": An
Analysis of Legislative and Policy Responses. *International Journal
of Technoethics (IJT)*, 8(2), 26-41. doi:10.4018/IJT.2017070103



Questions





Title



US states with Revenge Porn Laws

- Alaska: Harassment in the second degree. Alaska Stat. 11.61.120
- Arizona*: Unlawful distribution of images. Arizona Revised Statutes 13-1425 (Apr. 2015 amended version) [Note: presently on hold]
- California: Disorderly conduct misdemeanor. California Penal Code 647(j)(4).
- Colorado: Posting a private image for harassment (18-7-107), Posting a Private Image for pecuniary gain (18-7-108) -- both are class 1 misdemeanors. Colorado Revised Statutes 18-7-107 and 18-7-108
- Delaware: Violation of privacy; class B misdemeanor and class G felony if aggravating factors present Section 1335, Title 11 Delaware Code
- Florida: Sexual Cyberharassment. Misdemeanor first degree, (felony in third degree for repeat offenders) 784.049, Florida Statutes, Effective Oct 1, 2015
- Georgia: Invasion of privacy: Prohibition on nude or sexually explicit electronic transmissions, misdemeanor GA Code 16-11-90.
- Hawaii: Violation of privacy in the first degree, class C felony. Hawaii Revised Statutes 711-1110.9
- Idaho: Video voyeurism felony. Idaho Code 18-6609(2)(b)
- Illinois: Non-consensual dissemination of private sexual images; class 4 felony Illinois Criminal Code Sec. 11-23.5
- Maryland: Stalking and harassment. Maryland Code Section 3-809
- New Mexico: Unauthorized Distribution of Sensitive Images. Misdemeanor; (fourth degree felony if recidivist). New Mexico Criminal Code
- New Jersey: Invasion of privacy, third degree. New Jersey Code. 2C:14-9(c)
- Nevada: Unlawful dissemination of an intimate image, category D felony; NRS, Chapter 200, Sections 2-6
- Pennsylvania: Unlawful dissemination of intimate image, misdemeanor, 2nd degree (1st degree if person depicted is a minor). Title 18 Pennsylvania Consolidated Statutes Section 3131.
- Texas*: Improper Photography or Visual Recording Texas Penal Code 21.15 [Note: 21.15(b)(1) held unconstitutional]
- Utah: Distribution of intimate images, misdemeanor. Utah Code 76-5b-203
- Virginia: Unlawful dissemination or sale of images of another person; class 1 misdemeanor. Code of Virginia 18.2-386.2
- Wisconsin: Representations depicting nudity. Code of Wisconsin 942.09. See also text here.

Overseas - the US and Canada

- US Federal law proposed – bill to be introduced
- Numerous states have enacted laws
- E.g., Colorado
- Canada amended the *Criminal Code section 162.1* Publication etc., of an intimate image without consent

